

1 HOUSE BILL NO. 390

2 INTRODUCED BY K. SULLIVAN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE RIGHT TO
5 REPAIR; PROVIDING FOR AN AGRICULTURAL RIGHT TO REPAIR; REQUIRING MANUFACTURERS TO
6 MAKE DOCUMENTATION, PARTS, AND TOOLS AVAILABLE FOR REPAIR OF ELECTRONICS-ENABLED
7 IMPLEMENTS OF HUSBANDRY; PROVIDING FOR ENFORCEMENT UNDER THE MONTANA CONSUMER
8 PROTECTION ACT; PROVIDING LIMITATIONS; AND PROVIDING DEFINITIONS."

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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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12 NEW SECTION. Section 1. Short title. [Sections 1 through 5] may be cited as the "Agricultural Right
13 to Repair Act".

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15 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 5], unless the context clearly
16 indicates otherwise, the following definitions apply:

17 (1) "Authorized repair provider" means an individual or business unaffiliated with an original
18 equipment manufacturer that has an arrangement with an original equipment manufacturer under which the
19 original equipment manufacturer grants to the individual or business a license to use a trade name, service
20 mark, or other proprietary identifier for the purposes of offering diagnostic testing, maintenance, or repair of
21 electronics-enabled implements of husbandry under the name of the original equipment manufacturer, or
22 another arrangement with the original equipment manufacturer to offer the services on behalf of the original
23 equipment manufacturer.

24 (2) "Documentation" means any manual, diagram, reporting output, service code description,
25 schematic, or other guidance or information used in effecting the services of diagnostic testing, maintenance, or
26 repair of electronics-enabled implements of husbandry.

27 (3) "Electronics-enabled implement of husbandry" means an implement of husbandry as defined in
28 61-1-101 that depends for its functioning, in whole or in part, on digital electronics embedded in or attached to

1 it.

2 (4) "Embedded software" means any programmable instruction provided on firmware delivered with
3 electronics-enabled implements of husbandry or with a part for an implement of husbandry for purposes of
4 equipment operation, including all relevant patches and fixes made by the manufacturer of the equipment or
5 part for these purposes.

6 (5) "Fair and reasonable terms" means costs and terms that are equivalent to the most favorable
7 costs and terms under which an original equipment manufacturer offers the documentation, part, or tool, to an
8 authorized repair provider, less any discounts, rebates, or other incentive programs.

9 (6) "Firmware" means an embedded software program or set of instructions programmed on
10 electronics-enabled implements of husbandry or on a part of an implement of husbandry to allow the
11 electronics-enabled implement of husbandry or part to communicate within itself or with other computer
12 hardware.

13 (7) "Independent repair provider" means an individual or business operating in the state without an
14 arrangement with an original equipment manufacturer that would make the individual or business an authorized
15 repair provider, unaffiliated with an authorized repair provider, and engaged in the services of diagnostic
16 testing, maintenance, or repair of electronics-enabled implements of husbandry.

17 (8) "Original equipment manufacturer" means a business allowing or engaged in the selling, leasing,
18 or otherwise supplying of new electronics-enabled implements of husbandry to any individual or business.

19 (9) "Owner" means an individual or business that owns or leases electronics-enabled implements of
20 husbandry purchased or used in the state.

21 (10) "Part" means any replacement made available by an original equipment manufacturer for
22 purposes of effecting the services of maintenance or repair of electronics-enabled implements of husbandry.

23 (11) "Tool" means any software program, hardware implement, or other apparatus used for diagnostic
24 testing, maintenance, or repair of electronics-enabled implements of husbandry, including software or other
25 mechanisms that provision, program, or pair a new part, calibrate functionality, or perform any other function
26 required to bring the product back to fully functional condition.

27 (12) "Trade secret" has the meaning provided in 18 U.S.C. 1839.

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1 **NEW SECTION. Section 3. Requirements.** (1) For electronics-enabled implements of husbandry
2 and parts for the implements of husbandry sold or used in the state, an original equipment manufacturer shall
3 make available for purposes of diagnostic testing, maintenance, or repair of the implements of husbandry to
4 any independent repair provider or to the owner of the implement of husbandry or to the owner's agent, on fair
5 and reasonable terms, documentation, parts, or tools.

6 (2) For electronics-enabled implements of husbandry that contain an electronic security lock or other
7 security-related function, the original equipment manufacturer shall make available to any independent repair
8 provider or to the owner of the implement of husbandry or to the owner's agent, on fair and reasonable terms,
9 any special documentation, parts, or tools needed to disable the lock or function and to reset the lock or
10 function when disabled in the course of diagnostic testing, maintenance, or repair. Documentation, parts, or
11 tools made available pursuant to this subsection may be made available by means of an appropriate secured
12 system.

13 (3) Documentation provided electronically pursuant to this section must be provided at no cost.
14 Documentation provided in print pursuant to this part may include a charge for the actual costs of preparing and
15 sending the documentation.

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17 **NEW SECTION. Section 4. Enforcement.** Violation of [section 3] is an unfair method of competition
18 and an unfair act or practice. The department of justice may bring actions for violations of [section 3] pursuant
19 to 30-14-111.

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21 **NEW SECTION. Section 5. Limitations.** A provision of [sections 1 through 5] may not be construed:

22 (1) to require an original equipment manufacturer to divulge a trade secret except as necessary to
23 provide documentation, parts, or tools on fair and reasonable terms;

24 (2) to alter the terms of an arrangement between an original equipment manufacturer and an
25 authorized repair provider, except that any provision in the terms that purports to waive, avoid, restrict, or limit
26 the original equipment manufacturer's obligations under [this act] is void and unenforceable;

27 (3) to require an authorized repair provider to make documentation, parts, or tools available on fair
28 and reasonable terms; or

